In the Supreme Court of the United States.

OCTOBER TERM, 1904.

WESTERN ELECTRICAL SUPPLY COMPANY,
Plaintiff in Error,

vs.

ABBEVILLE ELECTRIC LIGHT AND POWER COMPANY, Defendant in Error.

No. 178.

Motion to Dismiss or Affirm and Brief in Support Thereof.

Comes now here Abbeville Electric Light and Power Company, the defendant in error, by Mr. Wm. N. Graydon, its attorney, and moves the Court as follows:

1. To dismiss in this cause the writ of error to the Supreme Court of South Carolina:

A. Because no Federal question was involved in the determination of the cause by the said Court, or entered into the judgment of the Court.

B. Because the judgment of that Court in this cause is fully sustainable independently of any claim set up by the plaintiff in error under the Constitution or laws of the United States.

C. Because no question in this cause was decided adversely to any right claimed by the plaintiff in error under the Constitution or laws of the United States.

2. To affirm in this case the judgment of the Supreme Court of South Carolina, because, if any question exists in the case of which this Court will take jurisdiction, it is manifest that the question on which the jurisdiction depends is so frivolous as not to need further argument.

And, in support of the motion thus made, the defendant in error submits the accompanying brief.

Wm. N. Graydon,
For Defendant in Error.

Take Notice, That on Monday, October 31st, 1904, at twelve o'clock M., or as soon thereafter as counsel can be heard, the foregoing motion will be called to the attention of the Court.

Wm. N. Graydon,
For Defendant in Error.

To Mr. Jackson H. Ralston, Counsel for Plaintiff in Error :

Service of the foregoing notice, together with a copy of the motion and the accompanying brief, is hereby acknowledged, this 5th day of October, 1904.

Jackson H. Ralston,
Attorney for Plaintiff in Error.

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Brief in Behalf of Defendant in Error.

Statement of the Case.

The defendant in error, Abbeville Electric Light and Power Company, a corporation chartered under the laws of South Carolina, and having its principal place of business in the City of Abbeville, brought suit for damages against the plaintiff in error, for breach of contract, in Abbeville County, South Carolina, for the sum of Nineteen Hundred and Ninety-Five Dollars.

The summons and complaint were served upon one George F. Schminke, an agent of the plaintiff in error, at Abbeville Court House, South Carolina, on the 7th day of November, 1900, and by the terms of the summons the plaintiff in error was required to answer the complaint within twenty days from the date of service, exclusive of the day of service.

Before the time for answering expired the plaintiff in error served on the attorney for the defendant in error, a notice that it would move to set aside the service of the summons upon the single ground that the party served, George F. Schminke, was not an agent of the said defendant, plaintiff in error. See Record, page 13.

The Circuit Court granted the motion to set aside the service of the summons upon the ground that the said Schminke was not such an agent as was contemplated by the Code of Procedure of South Carolina, governing such cases.

The Supreme Court of South Carolina reversed the judgment of the Circuit Court, and remanded the case, giving the defendant twenty days in which to answer the complaint. Record, page 18. See also 61 S. C. Reports, 361.

Within the time allowed by the Supreme Court of South Carolina to answer the complaint, the defendant, plaintiff in error, served a notice upon the plaintiff, declining to answer the complaint, and again attempting to set aside the service of the summons. The Circuit Court overruled the objection, and upon the verdict of a jury the plaintiff had judgment. From this judgment an appeal was taken to the Supreme Court of South Carolina, and that Court affirmed the judgment of the Circuit Court, upon the *sole* ground that the question was *res adjudicata*, and expressly declined to consider or pass upon the alleged Federal question. See Record, page 25.

From this judgment of the Supreme Court of South Carolina, the plaintiff in error applied for and obtained from the Chief Justice of the Supreme Court of South Carolina, a writ of error to this Court.

The assignment of errors by the plaintiff in error practically raises but one point, and that is that the Supreme Court of South Carolina erred in holding that the Section of the Code of Civil Procedure of South Carolina, Section 155, Sub-division 1, was not repugnant to or in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A sufficient answer to that, is that the Court made no such ruling. On the contrary, it expressly refused to pass on the questions sought to be raised, on the ground that it was not necessary to a decision of the case.

This Court has often declared the conditions under which a writ of error will lie to bring before it for review the judgment of a State Court.

In the case of Harrison vs. Morton, 171 U. S., at page 47, this Court says: "It is settled law that, to give this

Court jurisdiction of a writ of error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it."

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

DeSaussure vs. Gaillard, 127 U. S., 216.
Chemical Bank vs. City Bank of Portage, 160 U. S., 646.
Capital Bank vs. Cadiz Bank, 172 U. S., 425.
McQuade vs. Trenton, 172 U. S., 636.
Allen vs. Southern Pacific R. R. Co., 173 U. S., 479.
Beals vs. Cone, 188 U. S., 184.

The Supreme Court of the State expressly refused to pass on the alleged Federal question, and based its judgment on another and entirely different ground. The Federal question, therefore, is not involved at all in this case.

Can the judgment of the Supreme Court of South Carolina be sustained on other than a Federal ground? If so, this Court will not interfere.

The question decided by the Supreme Court of South Carolina is purely a local question. Each State has a right to declare the terms upon which foreign corporations shall do business in the State, and the doing of the business is an acceptance of the terms imposed by statute.

In the case of Simon vs. Craft, 182 U. S., 427, it is said:

"The proceedings in a State Court, in order to constitute due process of law under U. S. Constitution, 14th Amendment need not be by any particular mode, if they constitute a regular course of proceedings in which notice is given of the claim asserted, and an opportunity offered to defend against it." Quoted with approval in New Orleans Waterworks Co. vs. State of Louisiana, 185 U. S., 336. So far from being refused an opportunity to defend, the plaintiff in error was given ample opportunity to defend, but absolutely, without excuse, refused to avail itself of such privilege. See Record, page 7.

The Fifth Amendment to the Constitution contains no restriction on the powers of the State.

Brown vs. New Jersey, 175 U. S., 172.

In the case of Adams County vs. Burlington & Mo. R. R. Co., 112 U. S., 123, it is said: "To give us jurisdiction of a writ of error for the review of a judgment of a State Court, it must appear affirmatively, not only that a Federal question was raised, and presented for decision to the highest Court of the State having jurisdiction, but that it was decided, or that its decision was necessary to the judgment that was rendered. The cases to this effect are numerous."

The case of Chouteau & Maffit vs. Gibson, 111 U. S., 200-201, decides that where a Federal question was presented, but the Court based its judgment on the plea of *res adjudicata*, the writ of error would not lie. That case is very similar to the case at bar. This case is decided entirely upon the question of *res adjudicata*, as decided by previous decisions of the Supreme Court of South Carolina, and the common law, and no law of the United States affected the result. The judgment can be sustained entirely on other

than Federal questions, and the judgment below ought to be affirmed.

The defendant in error respectfully submits that this Court should not longer retain the case on its docket.

Wm. N. Graydon,
For Defendant in Error.